REMARKS

In the ***non-final*** Office Action mailed November 4, 2009, the Office noted that claims 16, 17, 19, 20 and 22-26 were pending and rejected claims 16, 17, 19, 20 and 22-26. In this Amendment claims 16, 20 and 22-26 have been amended, no claims have been canceled, and, thus, in view of the foregoing, claims 16, 17, 19, 20 and 22-26 remain pending for reconsideration which is requested. No new matter has been added. The Office's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 103

Claims 16-26 stand rejected under 35 U.S.C. § 103(a) as being obvious over Park, U.S. Patent Publication No. 2005/0025003 in view of Hwang, U.S. Patent Publication No. 2008/0101181. The Applicants respectfully disagree and traverse the rejection with an amendment and argument.

Claim 16 has been amended to further recite "wherein the defect management information includes (i) an evacuation source address which is an address of the position of the defect in the data area and (ii) an evacuation destination address which is an address of a recording position of the evacuation data, ***and further includes (iii) a start address of the data area, (iv) an end address of the data area and (v) a size of the shared area.***" (Emphasis added) Support for the

amendment may be found, for example, on page 30, lines 6-12 of the Specification. The Applicants submit that no new matter is believed to have been added by the amendment of the claims. Claims 20 and 22-26 have likewise been amended.

The Applicants note that Park, was filed May 10, 2004, and that Hwang was filed March 5, 2004, while the present Application claims benefit of priority to JP 2003-200303 filed July 23, 2003. Thus, to support a *prima facie* case of obviousness the features of the amended claims must be found in the provisional applications of both Park and Hwang.

However, the provisional application of Park merely discloses that only a PSN of a replacement cluster and a PSN of a defective cluster are extracted from an Access Block of each of the cluster which is read in the OSA (see page 4 of Park). However, the provisional application of Park does not disclose, suggest or teach that information other than the PSN of replacement cluster and the PSN of defective cluster are extracted from an Access Block of each of the cluster which is read in the OSA, Namely, the provisional application of Park does not disclose, suggest or teach that "a start address of the data area, an end address of the data area and a size of the OSA" other than the "evacuation source address and the evacuation destination address" are recorded in the OSA. As such, Park is not prior art as to the amended claims.

In addition, the provisional application of Hwang merely discloses that each of (i) the area into which the TDDS, which may include the start/end address of the data area, (i) the area into which the TDFL, which may include the address of the defect and the address of the spare area, and (iii) the spare area are absolutely and physically different from each other (see fig, 6 of Hwang). Therefore, even if the content of the provisional application of Hwang is combined to the content of the provisional application of Park, such a construction can be obtained that only the TDFL disclosed in Hwang is recorded into the OSA disclosed in Park same as the PSN of replacement cluster and the PSN of defective cluster disclosed in Park is recorded into the OSA. Namely, the TDDS disclosed in Hwang cannot be recorded into the OSA disclosed in Park, because Park does not disclose, suggest or teach that the information other than the PSN of replacement cluster and the PSN of defective cluster is recorded into the OSA. As such, Hwang is not prior art as to the amended claims. Therefore, the combination of Park and Hwang does not disclose the above novel feature of the present claims.

Further, according to the combination of the above novel feature of the present claims and another novel feature of the present claims such that the shared area is disposed between the data area and the control information recording

area, following technical effect can be obtained.

Firstly, since the start address and end address of the data area, the size of the shared area are included in the defect management information, the start address and end address of the data area, the size of the shared area can be changed while maintaining the compatibility with the general rewritable-type recording medium. Therefore, if the start address of the data area is shifted backward (to the outer circumferential side), it is possible to ensure or reserve a space between the control information recording area (for example, the lead-in area 101) and the data area, and dispose the shared area in the space. Further, depending on how to set the start address of the data area, it is possible to reserve the shared area which is relatively large (see page 34, line 23 through page 35 line 10 of the Specification of the present application).

Secondly, since the size of the shared area is included in the defect management information, the recording capacity of the shared area can be set to have a predetermined size. Thus, if it is expected that the defect occurs frequently, it is possible to make the large recording capacity of the shared area in advance.

Alternatively, if it is expected that the defect does not occur frequently because of the sophisticated

manufacturing technique of the recording medium, for example, it is possible to make the small recording capacity of the shared area in advance. By this, it is possible to reserve the data area which is necessary, and it is also possible to perform the optimum defect management depending on the situation (see page 37, lines 9-18 of the Specification of the present application).

For at least the reasons discussed above, Park and Hwang, taken separately or in combination, fail to render obvious the features of claims 16, 20 and 22-26 and the claims dependent therefrom.

Withdrawal of the rejections is respectfully requested.

SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. § 103. It is also submitted that claims 16, 17, 19, 20 and 22-26 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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